IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VIVIAN ARCHEY, GLENNOS CARTER, MINNIE CARTER, JOYCE FARMER, KENNETH GILBERT, MARY HOLLAND, VICTOR MCCLANAHAN, KENNETH NAPIER, BRENDA NEWTON, KEVIN ROSE, DEBRA SPRING, MARY WAGONER, WANDA WALLACE, NORMA ADAMS, DEBRA JOHNSON, OCTAVIA CHRISTY, RUSSELL HARRIS, CARL HENDERSON, BEULAH HENDERSON, JAMES HUGHES, REGINALD JACKSON, CARLI LAUGHLIN, CAROLYN MCDANIEL, BETTY MILES, CANSHONNA MOFFETT, WENDY MOREAU, CAROL MORRIS, ELMER PENNINGTON, BERTHA POLAND, VERONICA ROBINSON, MICHAEL ROGERS, ALINE THIBODEAUX, ANGELA ANDERSON, CHARLES CANNON, GLORIOUS HOLMES, TAMMY HOLT, MARGO JOHNSON, DANNY JOHNSON, DAVID LAMBERSON, JOSEPH MALONE, JOHN MOUNT, KENNETH OLDS, RICHARD SANDERS, CAROLYN SEAGLE, JAMES STOUT, RONALD TAYLOR, JAMES TURNER, ALBERT CLANTON, ROSCOE DOWNEY, JOANN GREEN, MICHEL HADINE, BERNADETTE LEE, GAYE MOORE, GLADYS NASH, BETTY POFF, DEBRA RICHARDS, LEISA CARNES, ANNIE WILLIS, YVONNE GRITZMAKER, MICHAEL OATEN, MARTHA MCCULLOUGH, LEE CRABTREE, IRVIN DALES, CHARLES HALL, MELISSA HAMMOND, JOSHUA KENDRICK, KENNETH LOWE, GIL NEWTON, LILLIE BOLDING, DARLENE CARMOUCHE, ALBERTA CHILDRESS, MARCELLA GOMEZ, ROY JOHNSON, RONNIE NORRIS, WILLIE ROGERS, GARY SHIPLEY, NANCY SISON, LEE AMOS, GERALD FLANAGAN, ARCHIE HIGGINS, JULIE SCRUGGS, BILLY SMITH, DAVID BARKER, RUTH BUNTLEY, SHAWANDA CRUZ, BRENDA

Case No:

JURY TRIAL DEMANDED

GOODMAN, LOIS HILL, LARRY JAMES, RUBY JOHNSON, and TINA SHARON,)

Plaintiffs,)

v.)

ASTRAZENECA PHARMACEUTICALS LP, ASTRAZENECA LP, ASTRA USA INC., ASTRAZENECA AB, ASTRAZENECA UK LTD, ASTRAZENECA , PLC, TAKEDA PHARMACEUTICALS USA, INC., TAKEDA PHARMACEUTICALS AMERICA, INC., TAKEDA PHARMACEUTICALS INTERNATIONAL, INC., TAKEDA DEVELOPMENT CENTER AMERICAS, INC., TAKEDA GMBH, TAKEDA PHARMACEUTICAL COMPANY LIMITED, PFIZER INC., SANTARUS, INC. and SALIX PHARMACEUTICALS, INC.,)

Defendants.)

NOTICE OF REMOVAL

Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (collectively, the "Removing Defendants"), under 28 U.S.C. §§ 1332, 1441, and 1446, remove the action styled *Archey, et al. v. AstraZeneca Pharmaceuticals LP, et al.*, No. 1722-CC00135, from the Twenty-Second Circuit Court of Missouri, in and for the City of St. Louis, to the United States District Court for the Eastern District of Missouri. As grounds for removal, the Removing Defendants state:

1. On January 11, 2017, Plaintiffs, none of whom is a citizen of Missouri[1], filed their petition in the Missouri Circuit Court. Plaintiffs seek damages as a result of alleged conduct by

[1] Because plaintiffs lack a connection with Missouri and the defendants are neither incorporated in Missouri, nor have their principal place of business in Missouri, there is a lack of personal jurisdiction over the defendants in this action.

Defendants arising from the alleged use of certain prescription and over the counter medications.

2. As explained more fully below, this Court has original jurisdiction under 28 U.S.C. § 1332 because complete diversity of citizenship between Plaintiffs and Defendants exists and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

3. Plaintiffs are, and at the time the petition was filed were, citizens of one of the following states: Kentucky, Louisiana, Tennessee or Virginia. *See* Petition, ¶¶ 2-91.

4. Defendant AstraZeneca Pharmaceuticals LP is, and at the time of the filing of this action was, a Delaware limited partnership with its principal place of business in Delaware. Partnerships assume the citizenship of their general and limited partners. *See Carden v. Arkoma Assoc*., 494 U.S. 185, 195 (U.S. 1990) (partnerships assume the citizenship of their general and limited partners). AstraZeneca Pharmaceuticals LP's general partner is, and at the time of the filing of this action was, AstraZeneca AB, a Swedish corporation with its principal place of business in Sweden. AstraZeneca Pharmaceuticals LP's sole limited partner is, and at the time of the filing of this action was Zeneca Inc., a Delaware corporation with its principal place of business in Delaware. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca Pharmaceuticals LP is deemed to be a citizen of Delaware and Sweden.

5. Defendant AstraZeneca LP is, and at the time of filing of this action was, a Delaware limited partnership. AstraZeneca LP's sole partner is, and at the time of the filing of this action was, AstraZeneca Pharmaceuticals LP. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca LP is deemed to be a citizen of Delaware and Sweden.

6. Defendant Astra USA LLC (incorrectly named herein as "Astra USA, Inc.") is, and at the time the action as filed was, a non-existing entity, following its merger with and into

Zeneca Inc. Thus, for purposes of determining diversity jurisdiction in this action, Astra USA LLC's citizenship is irrelevant and/or deemed to be Delaware.

7. Defendant AstraZeneca AB is, and at the time the action was filed was, a Swedish corporation with its principal place of business in Sweden. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca AB is deemed to be a citizen of Sweden.

8. Defendant AstraZeneca UK Ltd. is, and at the time the action was filed was, organized under the laws of England and Wales with the registered office in Cambridge. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca UK Ltd. is deemed to be a citizen of England and Wales.

9. Defendant AstraZeneca plc is, and at the time the action was filed was, organized as a public limited company under the laws of England and Wales with the registered office in Cambridge. Thus, for purposes of determining diversity jurisdiction in this action, AstraZeneca UK Ltd. is deemed to be a citizen of England and Wales.

10. Defendant Takeda Pharmaceuticals U.S.A., Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in Illinois. Thus, for purposes of determining diversity jurisdiction in this action, Takeda Pharmaceuticals U.S.A., Inc. is deemed to be a citizen of Delaware and Illinois.

11. Defendant Takeda Pharmaceuticals America, Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in Illinois. Thus, for purposes of determining diversity jurisdiction in this action, Takeda Pharmaceuticals America, Inc. is deemed to be a citizen of Delaware and Illinois.

12. Defendant Takeda Pharmaceuticals International, Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in

Illinois. Thus, for purposes of determining diversity jurisdiction in this action, Takeda Pharmaceuticals International, Inc. is deemed to be a citizen of Delaware and Illinois.

13. Defendant Takeda Development Center Americas, Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in Illinois. Thus, for purposes of determining diversity jurisdiction in this action, Takeda Development Center Americas, Inc. is deemed to be a citizen of Delaware and Illinois.

14. Defendant Takeda GmbH is, and at the time the action was filed was, a German corporation with its principal place of business in Germany. Thus, for purposes of determining diversity jurisdiction in this action, Takeda GmbH is deemed to be a citizen of Germany.

15. Defendant Takeda Pharmaceutical Company Limited is, and at the time the action was filed was, a Japanese corporation with its principal place of business in Japan. Thus, for purposes of determining diversity jurisdiction in this action, Takeda Pharmaceutical Company Limited is deemed to be a citizen of Japan.

16. Defendant Pfizer Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in New York. Thus, for purposes of determining diversity jurisdiction in this action, Pfizer Inc. is deemed to be a citizen of Delaware and New York.

17. Defendant Santarus, Inc. is, and at the time the action was filed was, a Delaware corporation with its principal place of business in North Carolina. Thus, for purposes of determining diversity jurisdiction in this action, Santarus, Inc. is deemed to be a citizen of Delaware and North Carolina.

18. Defendant Salix Pharmaceuticals, Inc. is, and at the time the action was filed was, a California corporation with its principal place of business in North Carolina. Thus, for

purposes of determining diversity jurisdiction in this action, Salix Pharmaceuticals, Inc. is deemed to be a citizen of California and North Carolina.

19. Complete diversity of citizenship exists between Plaintiffs and Defendants under 28 U.S.C. § 1332(a) and none of the Defendants are citizens of Missouri, the forum state.

20. Plaintiffs allege that they "have suffered and may continue to suffer from kidney injuries including acute interstitial nephritis ('AIN'), acute kidney injuries ('AKI'), chronic kidney disease ('CKD') and renal failure, also known as end-stage renal disease ('ESRD')." *See* Petition, ¶ 114. They bring claims for negligent failure to warn, negligence, strict product liability, strict product liability--defective design, breach of express and implied warranties and breach of implied warranty of merchantability.

21. Plaintiffs seek "in excess of $25,000" for each of their seven causes of action. Other complaints alleging similar injuries were filed in federal court and seek in excess of the jurisdictional minimum for federal diversity jurisdiction. *See e.g., Foster v. AstraZeneca Pharmaceuticals LP et al.*, 4:16-cv-01106-RK (W.D. Mo., October 14, 2016) at ¶ 3-4 (alleging "injuries to his kidneys including Chronic Kidney Disease"). Moreover, Plaintiffs seek punitive damages (Petition, ¶ 164), which are included in the calculation of the amount in controversy. *See Bell v. Preferred Life Assur. Soc'y,* 320 U.S. 238, 240 (1943); *Ross v. First Family Fin. Servs., Inc.*, 2002 WL 31059582, at *8 (N.D. Miss. Aug. 29, 2002) ("unspecified claims for punitive damages sufficiently serve to bring the amount in controversy over the requisite threshold set out in 28 U.S.C. § 1332"). Accordingly, the amount in controversy exceeds

$75,000.00, exclusive of interest and costs, as required for original jurisdiction in this Court under 28 U.S.C. § 1332(b).[2]

22. Pursuant to 28 U.S.C. § 1446(a), the Removing Defendants attach as Exhibit 1 a copy of all process and pleadings in the state court.

23. The Removing Defendants will give written notice of the filing of this Notice of Removal and will file a copy of this notice with the Clerk of the Missouri Circuit Court, as required by 28 U.S.C. § 1446(d).

24. Upon information and belief, none of the defendants have been served with the petition. See State Court Docket, Exhibit 2. Thus, the removal is timely. *Delgado v. Shell Oil Co.*, 231 F.3d 165, 177 (5th Cir. 2000) ("Generally, service of process is not an absolute prerequisite to removal. . . . We read § 1446(b) and its 'through service or otherwise' language as consciously reflecting a desire on the part of Congress to require that an action be commenced against a defendant before removal, but not that the defendant have been served"); *Taylor v. Cottrell, Inc.*, 2009 WL 1657427, at *2 (E.D. Mo. June 10, 2009) ("nothing in 28 U.S.C. § 1441 or any other statute requires defendants to have been served themselves prior to removing a case to federal court.")

25. Moreover, unserved defendants need not consent to the removal. *See* 28 U.S.C. § 1446(b)(2)(A) ("all defendants who have been properly joined ***and served*** must join in or consent to the removal of the action") (emphasis added). In any event, Defendants Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals International, Inc.; Takeda

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[2] In addition, if one plaintiff's claims exceed the jurisdictional minimum, the court has supplemental jurisdictional over claims of other plaintiffs. *Exxon Mobil Corp. v. Allapattah Svs., Inc.*, 545 U.S. 546, 558–59 (2005).

Development Center Americas, Inc.; Takeda GmbH; Takeda Pharmaceutical Company Limited; and Pfizer, Inc. consent to the removal, without waiver of service.

26. If any question arises as to the propriety of the removal of this action, the Removing Defendants request the opportunity to brief any disputed issues and to present oral argument in support of their position that this action is properly removable.

27. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any defendant's right to assert any defense or affirmative matter, including, without limitation, the defenses of (a) lack of jurisdiction over the person; (b) improper venue; (c) insufficiency of process; (d) insufficiency of service of process; (e) improper joinder of claims and/or parties; (f) failure to state a claim; (g) failure to join an indispensable party(ies); (h) lack of standing; or (i) any other procedural or substantive defense available under state or federal law. Nor do any of the Defendants waive service of the petition.

28. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, the Removing Defendants remove this case from the Missouri Circuit Court, 22nd Judicial Circuit, to the United States District Court for the Eastern District of the Missouri pursuant to 28 U.S.C. §§ 1441 and 1446, and state that no further proceedings may be had in the state action.

BAKER STERCHI COWDEN & RICE, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2017, I filed the above and foregoing with the Clerk of Court using the Court's electronic filing system, which will give notice of the filing to all counsel of record, and a copy of the foregoing was also mailed to the following counsel of record:

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